

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Daniel W. WONG, et al.
Title: SYSTEM FOR PREVENTING UNAUTHORIZED ACCESS TO SENSITIVE DATA AND A METHOD THEREOF
App. No.: 09/992,823 Filed: November 14, 2001
Examiner: Longbit CHAI Group Art Unit: 2131
Customer No.: 34456 Confirmation No.: 5879
Atty. Dkt. No.: ATI.0100520 (1376-0100520)

Mail Stop AF
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

**REMARKS IN SUPPORT OF
THE PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Dear Sir:

In response to the Final Office Action mailed August 21, 2007 (hereinafter, "the Final Action"), and pursuant to the Notice of Appeal and Pre-Appeal Brief Request for Review submitted herewith, the Applicants request review of the following issues on appeal.

Request for at least three examiners on the panel

In order to facilitate full consideration of the remarks filed herewith, the Applicant respectfully requests that the Art Unit Supervisor designate a panel composed of at least three examiners.

The cited references do not disclose or suggest providing a plaintext routine to a software driver

As explained in Applicants' Response to Final Office Action dated September 25, 2007 (hereinafter "the Response") neither of the references cited in the Final Action (specifically Ciacelli (U.S. Patent No. 6,236,727) and Crick et al. (U.S. Patent No. 5,675,793)), nor the

proposed combination thereof, discloses or suggest **providing a plaintext routine based on a decrypted routine of a software driver to the software driver.**

Ciacelli discloses a system for providing copyright data encrypted at a central processing unit to another software module executing at the central processing unit or to a peripheral device of a central processing unit, such as a decoder, for decryption. *Ciacelli*, col. 2, lines 55-63. An encrypted decryption algorithm can be sent with the copyright data. *Id.*, col. 5, lines 40-45. Ciacelli nowhere discloses or suggests a software driver, and necessarily fails to disclose or suggest providing a plaintext routine to a software driver.

Crick discloses a system for allocating memory for a plurality of software routines. *Crick*, Abstract. The Crick system includes a plurality of “component device drivers”, including a device driver for decrypting data. *Id.*, col. 3, lines 31-41. However, Crick fails to disclose or suggest **providing a plaintext routine based on a decrypted routine of a software driver to** any of the disclosed component device drivers.

The cited references do not disclose or suggest providing a plaintext routine to a software driver

Claim 1 recites “sending a first encrypted routine of a software driver to a peripheral device”, “decrypting, at the peripheral device, the first encrypted routine to generate a plaintext routine”, and “providing the plaintext routine to the software driver.” As explained above, the cited references fail to disclose or suggest at least these features of claim 1. According to the Final Action at page 5, providing a plaintext routine to a software driver is disclosed at column 3, lines 50-51 of Crick, which read as follows: “[a]nother software developer could develop component device driver 107 to encrypt and decrypt data.” Applicants respectfully submit that the cited passage merely indicates that a software developer could write a device driver for encryption and decryption. One skilled in the art would not understand the cite passage, nor any other portion of Crick, as disclosing providing a plaintext routine to a software driver.

The Office argues in the Advisory Action mailed on October 10, 2007, that “the plain text routine obtained after decrypting the encrypted version of the actual decryption (or encryption) algorithm as taught by Ciacelli...must be provided to the software driver in order to realize the capability of encrypting/decrypting data.” *Advisory Action*, p. 2. Applicants respectfully submit that Crick nowhere discloses or suggests that a plaintext routine based on a

decrypted encryption routine is in fact provided to the software driver. The only information Crick discloses as being received by the software driver is data retrieved from a disk. *Crick*, col. 3, lines 35-39. There is no disclosure or suggest that this retrieved data is a plaintext routine based on a decrypted encryption routine of a software driver.

The Office appears to be asserting that Crick must inherently receive a plaintext routine based on a decrypted routine of a software driver. However, “To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’” MPEP § 2112 (quoting *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).) Applicants respectfully submit that provision of a plaintext routine based on a decrypted routine of a software driver is not inherent in the disclosure of Crick, as suggested by the Advisory Action. That is, the software driver of Crick does not necessarily require the provision of a plaintext routine as suggested by the Office. For example, the software driver of Crick could be specifically designed (e.g. “hard-coded”) to implement a particular encryption/decryption routine. Thus, the software driver of Crick does not inherently require the provision of a plaintext routine based on a decrypted routine of a software driver, and Crick does not disclose or suggest providing such a routine. Applicants respectfully submit that the Office’s characterization of Crick is in fact a modification to the disclosure of Crick in order to accommodate its combination with Ciacelli. Such modification constitutes impermissible hindsight to achieve the features of at least claim 1.

Conclusion

As discussed above, the Office fails to establish that the cited references disclose or suggest each and every element recited by any of the pending claims. Accordingly, reconsideration and withdrawal of these rejections is respectfully requested.

Respectfully submitted,

December 21, 2007

Date

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